

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **06-MSRC-012**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER FOR TIM BROCK

TIM BROCK, ARVIL CAMPBELL,
SHANNON HURT & GARY SIMPSON

RESPONDENTS

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Tim Brock, by counsel, and the members of the Commission having reviewed the Settlement Agreement filed on July 14, 2006 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if

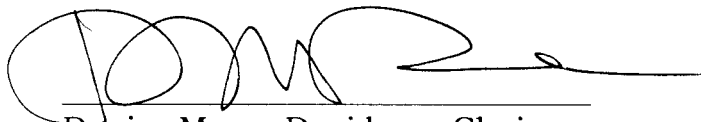
reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). The allegation in the Complaint stating the Respondent was a subsequent offender was in error. Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the

Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 10TH day of August 2006.

A handwritten signature in black ink, appearing to read 'DM Davidson', written over a horizontal line.

Denise Moore Davidson, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER was served by certified mail, return receipt requested, and by regular mail, postage pre-paid to the following this 11TH day of August 2006:

TIM BROCK
P.O. BOX 1294
HARLAN, KY 40831

And by regular mail to:

HON BARBARA E YEAGER
P.O. BOX 601
BARBOURVILLE KY 40906
Counsel for Gary Simpson

ARVIL CAMPBELL
P.O. BOX 1656
HYDEN, KY 41749

SHANNON HURT
HC 77 BOX 1690
DELPHIA, KY 41735

And by messenger mail to:

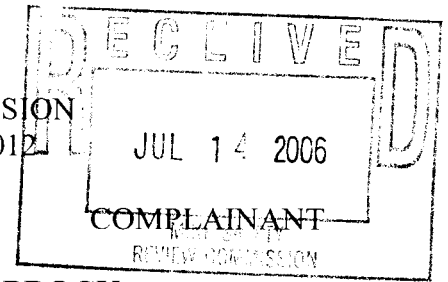
Hon. Steven C. Boyd
Office of Legal Services
Natural Resources Legal Division
#2 Hudson Hollow
Frankfort, Kentucky 40601
(502) 564-2356
FAX: (502) 564-9212

And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601


Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 06-MSRC-012



KENTUCKY OFFICE OF MINE SAFETY & LICENSING

V. SETTLEMENT AGREEMENT BETWEEN OMSL & TIM BROCK

TIM BROCK, TIM BROCK,
SHANNON HURT AND GARY SIMPSON

RESPONDENTS

* * * * *

Come the Complainant, the Kentucky Office of Mine Safety & Licensing (“OMSL”), and Respondent, Tim Brock (“Brock”), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this action against him, and the cancellation of the hearing (as it pertains to him) that is currently scheduled for August 10, 2006, Brock hereby admits that he violated KRS 352.220(1)(4), et al on January 7, 2005, at Motivation Enterprises No. 3 mine, as alleged in OMSL’s Complaint. This Settlement only concerns Tim Brock, and does not resolve the cases against Arvil Campbell, Shannon Hurt or Gary Simpson. Therefore, Tim Brock hereby agrees to the following:

1. The probation of his underground miner’s foreman certificate, (#A-168-87), for a period of six (6) months, effective upon the signing of the Order by the Mine Safety Review Commission approving this Settlement Agreement.
2. During this six-month probationary period, Tim Brock shall comply with all state and federal mine safety laws and regulations. The willful violation by Tim Brock of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground miner’s certificate for the remainder of the probationary period.

3. Within 45 days of the effective date of this Settlement Agreement, Tim Brock must take eight (8) hours of special safety training from OMSL at its Hazard District Office.

4. Tim Brock further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(13).

Tim Brock understands and agrees that he has had the opportunity to retain an attorney to represent him in this matter, but that he has chosen to represent himself. Tim Brock further states that he has carefully read this Settlement Agreement (or that the Settlement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Tim Brock acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

T. Brock
TIM BROCK
P.O. Box 1294
Harlan, Kentucky 40831

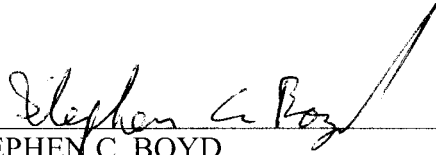
Johnny Greene
JOHNNY GREENE, Acting Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602

7-10-06
DATE

7-14-06
DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL and Tim Brock was mailed this 17 day of July, 2006, to: Tim Brock, P.O. Box 1294, Harlan, Kentucky 40831.


STEPHEN C. BOYD

C. MICHAEL HAINES, GENERAL COUNSEL

OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
KY OFFICE OF MINE SAFETY & LICENSING

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